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Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens
Director

**Waste Programs Division
Solid Waste Rule Development Process
Stakeholder Workshop
Wednesday, June 20, 2007 1:30 p.m.
Lone Tree Community College, Board Room
2800 S. Lone Tree Rd. Flagstaff, Arizona**

NOTES

ATTENDEES: See attached.

HANDOUTS

- Agenda.
- Developing a Framework for Regulating Solid Waste in Arizona (presentation).
- Draft Solid Waste Facility Classification: Tiered Regulatory Framework.
- Relevant statute and other references, contact information.

WELCOME

Facilitator Theresa Gunn, Gunn Communications, Inc., explained that the purpose of the meeting was to achieve the following:

- Review current solid waste rules and regulations.
- Present ADEQ's considerations in changes to solid waste regulation.
- Obtain stakeholder input.

Gunn facilitated introductions.

INTEGRATED REGULATORY FRAMEWORK

Martha Seaman, Waste Programs Division, presented an overview of the regulatory framework. She reviewed key statutes and definitions, why rulemaking is necessary, and why it is necessary at this time. Highlights of assumptions include:

- The mandate to create solid waste facility rules has existed since the early-1980s, or prior, which is before the agency was created.
- Arizona has a regulatory gap as compared to six western states: Utah, Nevada, New Mexico, Colorado, Texas, and Washington.
- Other states regulate both more waste streams and more types of solid waste facilities.
- ADEQ is concerned that the regulatory gap creates a protection deficit.

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Responses to stakeholder questions and comments:

- ADEQ did not look at California as a peer state because the California structure is considerably more built-out with more requirements. There tends to be an outcry among the regulated community when Arizona is compared to California.
- The EPA and federal requirements are not a driver regarding the regulation of most solid waste facilities, only landfills. Solid waste is an area where states tend to consider each other's rules. Some states' rules are based on facility type; others are based on the type of solid waste. Most states are a blend of these two approaches.
- The legislative mandate is a significant reason that there is a regulatory gap.
- There are facilities without any rules other than some very basic requirements.
- Some facilities have contaminated soil, but there aren't clear regulations that address these facilities.
- There are also new types of technologies and facilities going in that will not have rules. Facilities of concern include solid waste treatment facilities, waste to energy, incinerators, and recycling facilities.

Key stakeholder concerns included:

- Currently spend a half-million dollars in complying with regulations for a landfill.
- Have we identified the environmental impacts that require improvement?

INTEGRATED REGULATORY FRAMEWORK

Seaman presented a rule overview and agency assumptions. Highlights include:

- Consideration is made regarding the appropriate level of regulation.
- Legislative changes are not being sought, and the agency will work within the current statutory framework.
- Assumptions include:
 - Design and operating rules will be written.
 - A basic set of substantive requirements will apply to all solid waste facilities.
 - Requirements beyond the minimum may be required according to the type of facility.
 - A procedural framework for assuring compliance.
 - Financial assurance will be required after design and operating requirements are in place. A new facility could not operate without demonstrating financial assurance. An existing facility must show financial responsibility but may continue to operate.
- ADEQ will fully implement APP standards for all existing and new landfills. Non-MSWLFs are already subject to APP.
- Rules will be adopted to address the handling of conditionally exempt small quantity generator waste in the solid waste stream.
- There are approximately 20 exemptions to the definition of a solid waste facility, and another 20 exemptions to the definition of solid waste. There are various thresholds to becoming a solid waste facility.
- ADEQ is interested in engaging in a stakeholder discussion regarding creating an efficient, fair system for facility owner/operators with respect to the financial assurance review and approval that ADEQ is mandated by statute to perform.
- A tiered regulatory approach would include the following categories:
 - Exempt.
 - Subject to inspection.

- Subject to best management practices.
- Self-certification.
- Subject to plan approval (classic permitting process).

Responses to stakeholder questions and comments:

- Impacts to rural communities are considered.
- It is unlikely that the pending EPA change to the definition of solid waste would have an impact on this rulemaking. If the change were implemented, however, we would have to revisit this issue.
- Non-municipal solid waste landfills are currently subject to APP. The implications to municipal solid waste landfills will probably include the timing of hydrogeologic studies, factors for point of compliance, landfill design criteria.
- A landfill that has been closed properly probably would not be subject to APP-type rules.
- The agency is seeking input regarding applying APP to existing landfills. There may be portions that could be grandfathered in. For example, an unlined landfill might require increased ground water monitoring, rather than digging it up and lining it.
- The APP approach includes consideration of specific conditions.
- The solid waste permit for landfills would include aspects of APP.
- Thresholds regarding volume and time may address many hypothetical questions. If thresholds are exceeded, the site is considered a solid waste facility. There are locations with CESQG waste, such as transfer stations, that may need to take care not to commingle. However, these issues apply to commercial waste streams, not HHW.
- One-day events collecting HHW are exempt, regardless.
- In documenting incoming commercial non-hazardous waste, a facility would probably need to track where the waste comes from if it is from out of state. This is probably not much more tracking than currently occurs under these conditions.

Key stakeholder concerns included:

- Concerned about unfunded mandates.
- A PE on staff would not seal something inappropriate. Whether a PE is on staff, or hired as a third-party consultant, they still get paid by the company. What is the real issue, a PE stamp independent of the company, or providing a professional design?
- What about a household hazardous waste facility with a small intake of CESQG waste?

Action item:

- Consider whether AZPDES could be part of the solid waste permit.

WHICH FACILITIES WILL BE COVERED BY THE NEW RULE?

Seaman presented the regulatory tier designation matrix. The matrix includes the type of solid waste facility, the tier(s) under which a facility would be included, and citations for the statute(s) used to determine the tier.

Responses to stakeholder questions and comments:

- This list represents current statutes, and where facilities would fall under the five-tier approach.

- A currently approved facility permit would not weigh on a decision regarding the tiered process. Plan approval does not mean a landfill is exempt or will be exempt.
- The agency does not plan on issuing new permits to existing facilities regarding design issues.
- We will not ask MSWLFs to get an APP. Rather, we will incorporate APP concepts into solid waste rules.
- If a facility is exempt from items 1, 2, or 4 or the matrix, they are exempt from the definition of solid waste facility.
- Statute gives ADEQ the ability to inspect HHW and CESQG. Due to resources, these facilities are currently inspected on a complaint basis.

Key stakeholder concerns included:

- Concerned about transitioning existing landfills.
- It looks like I will have to manage my solid waste more stringently than I do the hazardous waste in order to stay out of the self-cert program.

ARTICLE 3 AND OTHER REGULATORY ISSUES

Seaman reviewed the handling of solid waste other than at solid waste facilities, Article 3 considerations, and next steps in the rulemaking process. Highlights included:

- AAC Ch13, Art 3 may be amended.
- These rules referring to methods of disposal date back to the 1960s and have not been updated. These rules are obsolete due to subsequent statutes.
- Basis for county delegation agreements.
- Next steps include:
 - Distribution of the rule text in August.
 - Workshops on rule text in September and October.
 - Filing the notice of proposed rulemaking by the end of 2007.

Gunn asked stakeholders what other concerns they had and what information should have been included in the presentation. Stakeholder feedback included:

- Should open up Article 11 regarding septic haulers. The requirement to have fly-tight containers of more than 750 gallons is a problem for those who service portable toilets. Allowing a container or less than 750 gallons would be useful. Also, it is difficult to maintain fly-tight containers for hoses.
- How would Non-MSWLFs transition to the new program? What would trigger a new permitting program? At what point would a facility move from APP to solid waste?
- What about fly ash under a site wide APP, and having a solid waste facility in an area with an area APP permit?
- We are concerned about modifications such as a daily cover change and would hope a Type 1-2 change would not be cause for a new review.
- It would be good if the rule does not conflict with special waste and other rules.

Responses to stakeholder questions and comments:

- The Legislature does not directly review rules in Arizona. After a rule is published, the Governor's Regulatory Review Council reviews the rule. However, rules can be superseded by new legislation.

- We hope to better clarify Type 3-4 changes.
- For a Non-MSWLF, a transition issue will include an annual update of financial assure. (MSWLFs already do this.)
- There are grants and assistance for waste diversion, research and implementation, but none to help the small quantity generator get up to speed.
- Once we determine the level of interest we will look at locations for rule workshops, as well as options for teleconferencing.
- APP asks for studies and demonstrations to back up what is being done.

Action item:

- Consider whether annual financial assurance for household hazardous waste on a landfill can combine with solid waste landfill financial assurance.
- Consider whether facilities can wrap financial assurance together.
- Provide notes from each meeting on the agency website, preferably with a link from the home page to help stakeholders locate the information.

Gunn encouraged stakeholders to contact Seaman with any concerns about where facilities fit into the matrix, and any other issues related to this rulemaking.



**Waste Programs Division
Solid Waste Rule Development Process
Stakeholder Attendees – June 20, 2007, 1:30 p.m.**

Name		Organization	Phone	E-Mail
John T.	Barlow	Arizona Strip Landfill Corp.	435-467-8175	johnb@tocc.us
Michael	Black	City of Flagstaff	928-853-4426	mblack@ci.flagstaff.az.us
Greg	Blanchard	W.L. Gore & Associates, Inc.	928-864-3385	gblancha@wlgore.com
Dean	Cooke	Arizona Strip Landfill Corp.	435-467-8175	
Suzanne	Ehrlich	Yavapai County Development Services	928-442-5409	suzanne.ehrlich@co.yavapai.az.us
Chuck	Howe	ADOT	928-779-7591	chowe@azdot.gov
Matt	Morales	City of Flagstaff	928-527-9843	mmorales@ci.flagstaff.az.us
Mark	Prein	APS	928-288-1189	mark_prein@apsc.com
Ken	Robinson	City of Flagstaff	928-527-9840	krobinson@ci.flagstaff.az.us
Rebecca	Sayers	City of Flagstaff	928-779-7678	rsayers@ci.flagstaff.az.us
Connie	Tucker	City of Prescott	928-777-1144	connie.tucker@cityofprescott.net

ADEQ and facilitation staff included:

Veronica Garcia, ADEQ
Peggy Guichard-Watters, ADEQ
Byron James, ADEQ
Mark Lewandowski, ADEQ
Denise McConaghy, ADEQ
Martha Seaman, ADEQ
Robin Thomas, ADEQ
Theresa Gunn, Gunn Communications, Inc.
Kelly Cairo, Gunn Communications, Inc.